

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 11, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF 07od-009

OAHU

Consent to Assign General Lease No. S-5353, Fredda A. Stroup, Trustee, Assignor, Jeffrey John Berg & Angela Marie Runyan, Trustees, Assignee, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-008:076.

APPLICANT:

Fredda A. Stroup, Trustee of the Fredda A. Stroup Revocable Living Trust dated March 7, 1995, as Assignor, to Jeffrey John Berg, Trustee of the Jeffrey John Berg Declaration of Trust dated October 26, 2005 and Angela Marie Runyan, Trustee of the Angela Marie Runyan Declaration of Trust dated October 26, 2005, Tenants in Common, whose mailing address is 41-849 Laumilo Street, Waimanalo, Koolaupoko, Oahu, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waimanalo, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-1-008:076, as shown on the attached map labeled Exhibit A.

AREA:

1.00 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ____ NO
 X

CHARACTER OF USE:

General agriculture. "General agriculture" means the cultivation and harvesting of truck, orchard, flower or nursery crops and the grazing and pasturing of animals other than pigs. (Note: No residential use is allowed)

TERM OF LEASE:

35 years, commencing on January 1, 1994 and expiring on December 31, 2028. Last rental reopening occurred on January 1, 2004; next rental reopening is scheduled for January 1, 2014.

ANNUAL RENTAL:

\$2,070, due semi-annually.

CONSIDERATION:

\$33,259.00.

RECOMMENDED PREMIUM:

None. (Refer to Exhibit B attached.)

DCCA VERIFICATION:

Not applicable.

REMARKS:

The subject lease was issued pursuant to Act 237, SLH 1988, as amended, to Mr. & Mrs. Harry Okino in 1995. By subsequent assignment, Fredda Stroup is the current lessee who runs a nursery at the location. Ms. Stroup plans to move to the mainland and has negotiated the sale of the lease to the assignee.

According to the assignees, they intend to continue the existing horticulture activities. Initially, the main customer of the produce will be a Mexican restaurant owned by the assignees. Ms. Runyan resided on her family farm in Iowa from age three to thirty growing corn, soybeans and raising farm animals. The assignees have spent time on the subject leasehold assisting Ms. Stroup with the daily operation of the nursery. Staff interviewed Jeff Berg and is satisfied the assignees are bona fide farmers qualified to perform the character of use set forth in the lease.

Ms. Stroup is in compliance with the rent, insurance and performance bond requirements

stipulated in the lease. On April 16, 2007, Jeffrey Berg was approved as a cooperator by the Windward Oahu Soil and Water Conservation District (SWCD). Staff understands Mr. Berg will be working on the conservation plan for this property with SWCD.

During the review of the subject lease, staff noted that the structures on the premises do not have authorization from the State or the City & County of Honolulu (City). Ms. Stroup was instructed to approach the City for the necessary building permits for the structures on the premises. Ms. Stroup has endeavored to obtain a building permit, but her application was rejected by the City because the subject premises do not constitute a legally subdivided lot. A copy of the comment sheet prepared by the Building Division of the City is attached as Exhibit C.

Staff discussed the relevant issues with the staff of the Subdivision Branch of the City, and provided a copy of Act 177, Session Laws of 1993. Act 177 stipulates that "Agricultural leaseholds under this Act shall be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency related to standards for subdivision development." A copy of the act is attached as Exhibit D. According to an email from the staff of the City, " ... [they] are not sure of what the intent of Act 177 was, but as a leased lot, the City cannot recognize the parcel as a subdivided lot for development purposes" Therefore, City staff concluded that a subdivision approval is required before any building permit application would be issued. Prior to the subdivision requirement being addressed by the City, the building permit plans had successfully gone through several rounds of review by the City's building permit staff.

The building permit plans were also reviewed and approved by the Chairperson.

Staff believes Act 177 exempts the subject parcel from the City's subdivision standards. The assignees were informed of the City's position and understand that it is at their risk to assume the lease and responsibility for the improvements pursuant to this assignment in the event of any possible enforcement action taken by the City. The assignor and assignees have stated that they will provide a notarized affidavit in form and content acceptable to the Chairperson for this purpose to demonstrate to the Land Board their knowledge and acceptance of the lack of City-issued building permits. For the Board's information, the State does not own any of the structures on the subject premises. In view of the acknowledgment by the assignor and assignees of the lack of City-issued building permits, and subject to the receipt of an affidavit satisfactory in form and content, staff has no objection to the proposed assignment.

Assignee has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Staff did not solicit comment from other agencies since there is no change in the use of the subject premises.

There are no other pertinent issues or concerns.

RECOMMENDATION:

That the Board consent to the assignment of General Lease No. S-5353 from Fredda A. Stroup, Trustee of the Fredda A. Stroup Revocable Living Trust dated March 7, 1995, as Assignor, to Jeffrey John Berg, Trustee of the Jeffrey John Berg Declaration of Trust dated October 26, 2005 and Angela Marie Runyan, Trustee of the Angela Marie Runyan Declaration of Trust dated October 26, 2005, as Assignee, under the terms and conditions cited above which are by this reference incorporated herein and further subject to the following:

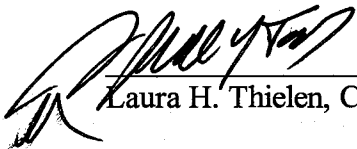
1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



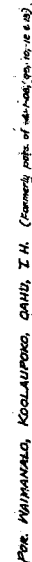
Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson





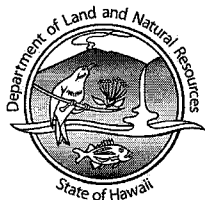
SUBJECT TO CHANGE

Note All reservoirs, floods, citizens, districts, pumps, pipelines & existing works for raising the government land & State lands by Exec. Ord. No. 192, to be under the control & management of the Meter & Land Development Division.

NOTE: All rates listed by State of Hawaii unless otherwise noted.

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CONTAINING		PARCELS



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 1, 2007

MEMORANDUM

TO: Laura H. Thielen, Chairperson

THROUGH: Russell Y. Tsuji, Land Division Administrator

FROM: Cyrus C. Chen, Real Estate Appraisal Manager *Cyrus Chen*

SUBJECT: In-House Valuation Recommendation – Assignment Premium Calculation

GL No.: S-5353
Lessee/Assignor: Fredda A. Stroup Trust
Assignee: Jeffrey Berg Trust and Angela Runyon Trust
Location: Waimanalo, Oahu, Hawaii
Lease Area: 1.0 acre
Tax Map Key: (1) 4-1-08: 76

We have been requested to provide an in-house evaluation of the assignment premium due to the State for Consent of Assignment of GL S-5353 requested by the Lessee. This lease was assigned to the current Lessee in September 1998 from the original Lessee. A prior in-house evaluation of the assignment premium was performed dated March 8, 2007. However, the Lessee is requesting another evaluation due to a reduction in the consideration.

Schedule E of the Assignment of Lease Evaluation Policy was followed to derive the premium due for the net consideration paid by the current Lessee. According to the policy, the net consideration paid is now defined to be the value of the improvements as of the date of occupancy by the assignor.

No credit was given for improvements made by the current Lessee. These improvements were considered ineligible due to the fact these receipts for improvements and/or renovations were submitted approximately 8.5 years too late. The policy dictates these receipts are to be submitted within 30 days of completion. Furthermore, plans for these improvements were not approved by Honolulu City and County's Department of Planning and Permitting and the improvements were constructed without proper City building permits. Also, the Lessee was required, as stipulated in the lease, to submit building plans for approval by the Chairperson prior to construction. This was not done. Staff's calculation is displayed on the attached Table 1.

EXHIBIT "B"

The depreciated value of the improvements is more than the net consideration in the above calculation, thus equivalent to \$0 in excess. Therefore, we recommend an assignment premium of \$0 for the subject request.

Table 1

Assignment of Lease Premium Calculation
GL 5353: Fredda Stroup

Consideration Received		\$33,259
Inventory		<u>(\$7,000)</u>
Net Consideration Received		\$26,259
Consideration Paid (Prior Assignment)	\$25,019	
Less Premium	<u>(\$740)</u>	
Net Consideration Paid	\$24,279	

Depreciated Adjusted Value of Consideration Paid

		<u>Year</u>
CCI (most recent)	185	2007
CCI (base year)	119.4	1998
Expired Term	110	mos.
Whole Term	420	mos.

1 Adjusted Value of Consideration

$$\text{Actual Cost} \times \frac{\text{CCI (most recent)}}{\text{CCI (base year)}}$$

$$\$24,279 \times \frac{185}{119.4} = \$37,617$$

2 Depreciation

$$\$37,617 \times \frac{110 \text{ mos.}}{420 \text{ mos.}} = \$9,852$$

3 Adjusted Depreciated Value of Consideration

$$\$37,617 - \$9,852 = \$27,765$$

4 Premium Calculation

Net Consideration		\$26,259
Adjusted Value Consideration	\$37,617	
Total Depreciation	<u>(\$9,852)</u>	
Adjusted Deprec. Value of Consideration		<u>\$27,765</u>
Excess		<u>(\$1,506)</u>
Premium Percentage	x	<u>45%</u>
Premium Due		<u>\$0</u>

Department of Planning and Permitting
Building Division
REVIEW OF PLANS AND SPECIFICATIONS
Zoning Code Comment Sheet

File No.: **A2007-06-0388**

Date: **October 11, 2007**

Plans Examiner: **LORI-ANN GAUER**

Phone: **7688248**

Job Description: **[TMK: 41008076] Fredda Stroup - New storage area & covered horse stalls**

TMK: **4-1-008: 076**

Plans By: **STROUP, FREDDA**

RECEIVED
LAND DIVISION
2007 OCT 22 A 10:36
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Zoning District: **AG-2 GENERAL AGRICULTURAL DISTRICT**

Flood District: **FIRM ZONE X (SHADED)**
FIRM ZONE A

Occupancy Group:

Type of Construction: Minimum:

Actual:

Story Height:

Floor Area:

Auto.Spr. Syst.:

Comments

Follow Up

Prior to processing this building permit application, provide legal documentation that the subdivision approval creating this lot has indeed been granted by the City and County of Honolulu.

The City has been unable to find any record of a subdivision approval creating this parcel. Our records (file no. 1965-451) indicate that this parcel is part of Lot B of 72.614 acres.

AFTER the subdivision has been approved by the City, address the following comments:

1. Submit an Area Tabulation for each structures on this lot. See attachment for your information and use.
2. On the Plot Plan, provide the setback dimensions to the property line on ALL sides.
3. All proposed work on this lot shall be in accordance with Section 7.10-6, Flood Fringe District, of the Land Use Ordinance and the provisions of the National Flood Insurance Program.
4. Label each roof framing plan, floor plan, elevation plan, etc. to reference each structure.
5. What is the principal use? If the principal use will be used as a recreational facilities—outdoor, a Conditional Use Permit - Minor is required AND subject to the following conditions:
 - a. Not more than five riding animals shall be kept for each acre of land within a site used for a riding academy or stable.
 - b. All buildings housing animals, and all corrals in which animals are kept or assembled, shall be at least 100 feet from any property line when they adjoin zoning lots in country, residential, apartment or apartment mixed use districts.

EXHIBIT "C"

Project:

Zoning ID:

Sheet 1 of 2 Sheet(s)

Review No.: **1**

Processid: 27082030

Jobid: 26374758

Externald: 026374758-001

File No.: **A2007-06-0388**

ACT 177

H.B. NO. 1675

A Bill for an Act Relating to Public Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 237, Session Laws of Hawaii 1988, is amended by adding a new section to be appropriately designated and to read as follows:

“SECTION . Agricultural leaseholds under this Act shall be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency related to standards for subdivision development.”

SECTION 2. Act 237, Session Laws of Hawaii 1988, as amended by Act 249, Session Laws of Hawaii 1990, and Act 69, Session Laws of Hawaii 1991, is amended by amending SECTION 7 to read as follows:

“SECTION 7. This Act shall take effect on July 1, 1988, and shall be repealed on July 1, [1993.] 1994.”

SECTION 3. Act 5, Session Laws of Hawaii 1987, as amended by Act 106, Session Laws of Hawaii 1991 and Act 58, Session Laws of Hawaii 1992, is amended by amending SECTION 6 to read as follows:

“SECTION 6. Notwithstanding any other law to the contrary, including chapter 171, Hawaii Revised Statutes, the department of land and natural resources is authorized to negotiate and enter into lease agreements in accordance with the provisions and limitations of this Act; provided that the authority granted by this Act shall expire (1) when leases have been negotiated and recorded in the bureau of conveyances for all parcels meeting the criteria in this Act, or (2) on [July] January 1, [1993.] 1994, whichever occurs first.”

SECTION 4. Session law material to be repealed is bracketed. New session law material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved June 9, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

EXHIBIT “D”